

## UNITED STATES DISTRICT COURT

for the

District of New Mexico

United States of America

v.

Brian Wharton  
(year of birth: 1989)

Case No. MJ 24-1087 LF

United States District Court  
Albuquerque, New MexicoMitchell R. Elfers  
Clerk of Court*Defendant(s)*

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of July 27, 2024 in the county of Bernalillo in the  
District of New Mexico, the defendant(s) violated:*Code Section*

18 U.S.C. § 2252A(a)(2)

*Offense Description*

Distribution of Child Pornography

This criminal complaint is based on these facts:

See attached affidavit.

☒ Continued on the attached sheet.  
*Complainant's signature*FBI Special Agent Jill Albee  
*Printed name and title*

Telephonically sworn and electronically signed.

Date: 07/28/2024  
*Judge's signature*City and state: Albuquerque, New MexicoHonorable Laura Fashing, U.S. Magistrate Judge  
*Printed name and title*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF THE ARREST OF:

Case No. \_\_\_\_\_

Brian Wharton (YOB 1989)

**AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT**

I, Jill Albee, having been duly sworn, do hereby depose and state:

**INTRODUCTION AND BACKGROUND OF THE AFFIANT**

1. I make this Affidavit in support of a criminal complaint and arrest warrant charging Brian Wharton (YOB 1989) (WHARTON) with a violation of 18 U.S.C. § 2252A(a)(2) Distribution of Child Pornography.

2. I am a Special Agent (“SA”) of the Federal Bureau of Investigation (“FBI”) and have been so employed since June 2023. I am recognized as a “federal law enforcement officer” within the meaning of Federal Rule of Criminal Procedure (“FRCP”) 41(a)(2)(C). I am currently assigned to the Child Exploitation Human Trafficking Task Force (“CEHTTF”) in Albuquerque, NM, where my responsibilities include investigating a myriad of federal violations including, violent crimes against children, human trafficking, child pornography, online enticement, and sexual exploitation of children. I have received on the job training from other law enforcement officers and experienced agents in the investigation of federal offenses, to include the possession, distribution, and production of child pornography. My investigative training and experience includes, but is not limited to, conducting surveillance; interviewing subjects, victims, and witnesses; writing affidavits for search warrants and criminal complaints; and collecting evidence.

3. The statements in this Affidavit are based on my own investigation, training, and experience, as well as information from other law enforcement officers and reliable sources.

Because this Affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts which I believe are necessary to establish probable cause to support obtaining a criminal complaint against WHARTON, for a violation of 18 U.S.C. § 2252A(a)(2) Distribution of Child Pornography.

### **RELEVANT LEGAL DEFINITIONS**

4. The following terms are relevant to this Affidavit in support of this application for a criminal complaint:

a. *Child Pornography*: The term “child pornography” is defined at 18 U.S.C. § 2256(8). It consists of visual depiction of sexually explicit conduct where (a) the production of the visual depiction involved the use of a minor engaged in sexually explicit conduct, (b) the visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaged in sexually explicit conduct, or (c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaged in sexually explicit conduct), as well as any visual depiction, the production of which involves the use of a minor engaged in sexually explicit conduct. See 18 U.S.C. §§ 2252 and 2256(2), (8).

b. *Minor*: The term “minor” means any person under the age of eighteen years. See 18 U.S.C. § 2256(1).

c. *Sexually Explicit Conduct*: The term “sexually explicit conduct” means actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between persons of the same or opposite sex; (b) bestiality; (c) masturbation; (d)

sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any persons. See 18 U.S.C. § 2256(2)

### **SUMMARY OF PROBABLE CAUSE**

5. On July 26, 2024, a law enforcement online covert employee (“OCE”) based outside New Mexico entered a private KIK group, of which the OCE has been a member for several months. This group was known to the OCE as a place where people meet, discuss, and trade images and videos of underage children, including child pornography. Upon entering the group, the OCE received a private message from a member of the group using the screenname bradT033 (“SUBJECT ACCOUNT 1”). Through SUBJECT ACCOUNT 1, which was later confirmed to belong to WHARTON, WHARTON sent the OCE two clothed images of a minor.

6. On July 27, 2024, WHARTON continued to chat with OCE and sent the OCE an image of the same minor sleeping. The child was clothed in the picture. WHARTON then sent another picture depicting his erect penis through his underwear.

7. WHARTON informed the OCE that he had a mega<sup>1</sup> link that he wanted to share with the OCE. WHARTON tried sending the link through SUBJECT ACCOUNT 1 on KIK but stated that it would not allow him to send. WHARTON then asked the OCE for his Telegram account name and began communicating with the OCE privately on Telegram. The OCE was contacted on Telegram by WHARTON using the screenname “Brad Trujillo” (“SUBJECT ACCOUNT 2”). Using SUBJECT ACCOUNT 2, WHARTON sent the OCE a mega link which contained 645 video files with four subfolders. The first folder was named, “pedomom.” The second folder was named, “aunty with boy.” The third was titled, “Teen rap...angbang” and the

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<sup>1</sup> Mega is a New Zealand based cloud storage and file hosting service offered primarily through web-based applications and available on mobile devices, to include Android, iOS, and Windows operating systems

fourth was named, "cp young." Each folder contained numerous videos of children as young as infants being sexually abused by adults. The following is a sample of some of those videos sent by WHARTON through SUBJECT ACCOUNT 2:

- a. A video 11:26 in length. The video depicts an adult female licking the bare vagina of a toddler girl and digitally penetrating the girl's anus with her fingers. The adult female forces the toddler to lick her vagina. The child is heard crying in the video.
- b. A 12 second video depicting an adult male sticking his erect penis in the mouth of an infant.
- c. A 54 second video depicting an adult male rubbing his erect penis on the bare buttock crack of an infant and then putting his penis in the infant's mouth.

8. After sending the mega link containing child pornography, WHARTON stated, "Theres like two 3 folders all together in that file. Now I'm more hard just came to the living room." WHARTON then sent an image to the OCE depicting himself holding his erect penis. A tattoo was visible on his hand which included the numbers "62." WHARTON further stated, "These videos are so hot."

9. Based on WHARTON's statements indicating his access to a minor and his intent regarding the minor, an emergency disclosure request ("EDR") was sent to Kik. Kik provided several IP addresses, dated June 27, 2024 to July 26, 2024. Comcast verbally responded to an EDR and indicated IP address 174.56.6.211, the most recent IP dated July 26, 2024, resolved to subscribers Joann and Brian Coats at a residence in Northwest Albuquerque.

10. Additionally, Mega responded to an EDR for the link sent by WHARTON through SUBJECT ACCOUNT 2 and indicated the link was created by a user with the email address whartonbrian@yahoo.com.

11. Law enforcement and public database searches confirmed that WHARTON resided at the Northwest Albuquerque address. Photographs located on WHARTON's Facebook page depicted a hand tattoo consistent with the tattoos visible in the photo sent by WHARTON on SUBJECT ACCOUNT 2 to the OCE, specifically the numbers "1962" on his left hand leading to his left thumb.

12. On July 27, 2024, law enforcement obtained and executed a search warrant at WHARTON's Albuquerque residence. WHARTON was present at the residence. During the execution of the search warrant they located an Apple iPhone found on WHARTON's person (the iPhone). A KIK account with username "bradT033" (SUBJECT ACCOUNT 1) was identified on the iPhone, which is the same account used to communicate with the OCE.

13. During an on-scene preview of the iPhone, law enforcement determined that the Apple ID displayed the name "Brian Wharton" and the email address "whartonbrian@yahoo.com", which is the same email address used to create the Mega link sent by SUBJECT ACCOUNT 2 containing child pornography. Additionally, law enforcement located an email received by whartonbrian@yahoo.com at approximately 8:20am on July 27, 2024, indicating a verification code from Telegram, consistent with WHARTON transitioning the conversation with the OCE from Kik to Telegram. A review of the iPhone's browser history indicated history associated with Mega, as well as a search on July 27, 2024 for the OCE's phone number.

14. A photograph located on the iPhone depicts a hand with tattoos consistent with the photo sent through SUBJECT ACCOUNT 2 to the OCE, specifically the numbers "62" on the left hand leading to the left thumb. I personally observed WHARTON's left hand and confirmed he has the numbers "1962" leading to the left thumb.

15. In summary, I have probable cause to believe that WHARTON is the individual behind both SUBJECT ACCOUNT 1 and SUBJECT ACCOUNT 2. SUBJECT ACCOUNT 1 was located on the iPhone seized from WHARTON's person during the execution of the search warrant. SUBJECT ACCOUNT 2 was not located during the on-scene preview of the device, but I have probable cause that WHARTON utilized this account to distribute child pornography because he contacted the OCE from SUBJECT ACCOUNT 2, sent the OCE a photo depicting his tattooed hand, and distributed child pornography through a mega link created with the Yahoo email address also located on his iPhone.

#### **INTERSTATE NEXUS**

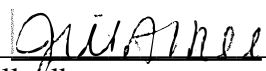
16. I believe the element of "in or affecting interstate or foreign commerce" is satisfied for a violation of 18 U.S.C. § 2522A, certain activities relating to material constituting or containing child pornography. This is based on Mega's location in New Zealand, as well as WHARTON's communication with the OCE across state lines.

#### **CONCLUSION**

17. Based on the above information, I believe there is probable cause to believe that WHARTON violated 18 U.S.C. § 2252A(a)(2), Distribution of Child Pornography by distributing a link containing videos and images of minors engaged in sexually explicit conduct.

18. Assistant United States Attorney Sarah Mease has reviewed and approved this affidavit.

19. I declare that the foregoing is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Jill Albee  
FBI Special Agent

Electronically submitted and telephonically sworn  
on the 28 of July 2024:

  
\_\_\_\_\_  
THE HONORABLE LAURA FASHING  
UNITED STATES MAGISTRATE JUDGE